

## §919.115

to protect the public interest. A Federal agency may not exclude a person or commodity for the purposes of punishment.

### **§919.115 How does an exclusion restrict a person's involvement in covered transactions?**

With the exceptions stated in §§919.120, 919.315, and 919.420, a person who is excluded by the OPM or any other Federal agency may not:

- (a) Be a participant in a(n) OPM transaction that is a covered transaction under subpart B of this part;
- (b) Be a participant in a transaction of any other Federal agency that is a covered transaction under that agency's regulation for debarment and suspension; or
- (c) Act as a principal of a person participating in one of those covered transactions.

### **§919.120 May we grant an exception to let an excluded person participate in a covered transaction?**

(a) The Debarring Official may grant an exception permitting an excluded person to participate in a particular covered transaction. If the Debarring Official grants an exception, the exception must be in writing and state the reason(s) for deviating from the governmentwide policy in Executive Order 12549.

(b) An exception granted by one agency for an excluded person does not extend to the covered transactions of another agency.

### **§919.125 Does an exclusion under the nonprocurement system affect a person's eligibility for Federal procurement contracts?**

If any Federal agency excludes a person under its nonprocurement common rule on or after August 25, 1995, the excluded person is also ineligible to participate in Federal procurement transactions under the FAR. Therefore, an exclusion under this part has reciprocal effect in Federal procurement transactions.

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### **§919.130 Does exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?**

If any Federal agency excludes a person under the FAR on or after August 25, 1995, the excluded person is also ineligible to participate in nonprocurement covered transactions under this part. Therefore, an exclusion under the FAR has reciprocal effect in Federal nonprocurement transactions.

### **§919.135 May the OPM exclude a person who is not currently participating in a nonprocurement transaction?**

Given a cause that justifies an exclusion under this part, we may exclude any person who has been involved, is currently involved, or may reasonably be expected to be involved in a covered transaction.

### **§919.140 How do I know if a person is excluded?**

Check the *Excluded Parties List System (EPLS)* to determine whether a person is excluded. The General Services Administration (GSA) maintains the *EPLS* and makes it available, as detailed in subpart E of this part. When a Federal agency takes an action to exclude a person under the nonprocurement or procurement debarment and suspension system, the agency enters the information about the excluded person into the *EPLS*.

### **§919.145 Does this part address persons who are disqualified, as well as those who are excluded from nonprocurement transactions?**

Except if provided for in Subpart J of this part, this part—

(a) Addresses disqualified persons only to—

(1) Provide for their inclusion in the *EPLS*; and

(2) State responsibilities of Federal agencies and participants to check for disqualified persons before entering into covered transactions.

(b) Does not specify the—

(1) OPM transactions for which a disqualified person is ineligible. Those transactions vary on a case-by-case

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basis, because they depend on the language of the specific statute, Executive order, or regulation that caused the disqualification;

(2) Entities to which the disqualification applies; or

(3) Process that the agency uses to disqualify a person. Unlike exclusion, disqualification is frequently not a discretionary action that a Federal agency takes.

### Subpart B—Covered Transactions

#### §919.200 What is a covered transaction?

A covered transaction is a nonprocurement or procurement transaction that is subject to the prohibitions of this part. It may be a transaction at—

(a) The primary tier, between a Federal agency and a person (see appendix to this part); or

(b) A lower tier, between a participant in a covered transaction and another person.

#### §919.205 Why is it important if a particular transaction is a covered transaction?

The importance of a covered transaction depends upon who you are.

(a) As a participant in the transaction, you have the responsibilities laid out in Subpart C of this part. Those include responsibilities to the person or Federal agency at the next higher tier from whom you received the transaction, if any. They also include responsibilities if you subsequently enter into other covered transactions with persons at the next lower tier.

(b) As a Federal official who enters into a primary tier transaction, you have the responsibilities laid out in subpart D of this part.

(c) As an excluded person, you may not be a participant or principal in the transaction unless—

(1) The person who entered into the transaction with you allows you to continue your involvement in a transaction that predates your exclusion, as permitted under §919.310 or §919.415; or

(2) A(n) OPM official obtains an exception from the Debarring Official to

allow you to be involved in the transaction, as permitted under §919.120.

#### §919.210 Which nonprocurement transactions are covered transactions?

All nonprocurement transactions, as defined in §919.970, are covered transactions unless listed in §919.215. (See appendix to this part.)

#### §919.215 Which nonprocurement transactions are not covered transactions?

The following types of nonprocurement transactions are not covered transactions:

(a) A direct award to—

(1) A foreign government or foreign governmental entity;

(2) A public international organization;

(3) An entity owned (in whole or in part) or controlled by a foreign government; or

(4) Any other entity consisting wholly or partially of one or more foreign governments or foreign governmental entities.

(b) A benefit to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted). For example, if a person receives social security benefits under the Supplemental Security Income provisions of the Social Security Act, 42 U.S.C. 1301 et seq., those benefits are not covered transactions and, therefore, are not affected if the person is excluded.

(c) Federal employment.

(d) A transaction that the OPM needs to respond to a national or agency-recognized emergency or disaster.

(e) A permit, license, certificate, or similar instrument issued as a means to regulate public health, safety, or the environment, unless the OPM specifically designates it to be a covered transaction.

(f) An incidental benefit that results from ordinary governmental operations.

(g) Any other transaction if the application of an exclusion to the transaction is prohibited by law.